REMARKS

This is in response to the Office Action of March 13, 2009. With this amendment, claims 1, 36 and 40 are amended and all pending claims 24-42 are presented for reconsideration and favorable action.

In the Office Action, claim 36 was objected to. That claim has been amended and it is believed that the objection may be withdrawn.

In the Office Action, the claims were rejected either alone or based upon combinations of various references, these references include Staniforth (US 2003/0138503); Girsh (US 2001/0007690); Brown et al. (US 4,360,387); Scott (US 3,932,614); Ambrosen (US 2003/0157050); McGinity (US 5,622,993); Schlaeger (US 6,241,978); Joshi (US 4,017,574); and Harbeck (US 2001/0014315). Claim 28 was indicated as containing allowable subject matter.

With this response, the claims have been amended and it is believed that they are patentably distinct from the cited references.

Initially, Applicant notes that although substantially the same claims have been granted in Europe, Japan and Australia, the Examiner has raised objections. In particular, he first states that the claims have an inordinate breath and then objects that the independent product claim, as well as many of the other claims are anticipated by US 2003/0138503 (Staniforth), US 2001/0007690 (Girsh), US 4,360,387 (Brown), US 3,932,614 (Scott), US 2003/0157050 (Ambrosen – this is one of the Applicant's earlier applications) and US 5,622,993 (McGinity).

However, in raising these objections, the Examiner appears to have ignored that independent claim 24 recites a cosmetic hair conditioning product. None of the documents listed above discloses a cosmetic hair conditioning product or anything approaching it. Thus, Staniforth relates to topical formulations comprising a therapeutically effective amount of a therapeutic agent, although anti-perspirants and skin softeners are also considered; Girsh relates to a chocolate bar; the relevant example in Brown is for a sun protection stick; the relevant example in Scott is for a lipstick; Ambrosen discloses a solid lotion bar for softening the skin, although sun screen may be added; and McGinity discloses stick formulations for topical drug delivery for therapeutic agents such as hydrocortisone.

The Examiner also objects that claim 24 is obvious from US 6241978 (Schlaeger). As the Examiner notes, a combination of claims 1 and 2 of Schlaeger results in a hair stick comprising a combination of solid waxes and liquid oils, the liquid oils being deemed to comprise cocoa butter and the liquid oils comprising between 15% and 35% of the whole composition. In example 2 in column 18, cocoa butter forms 8% of the total composition. Thus, the Examiner considers that it would have been obvious to use slightly more cocoa butter in example 2 with complete confidence of successfully obtaining an effective hair conditioner.

However, we believe the Examiner's objection is misguided. Firstly, although cocoa butter is described at the bottom of column 14 as an emollient to soften and lubricate the hair and as being a solid fat which melts at body temperature, it is nonetheless described as a liquid oil within the claims. Consequently, this document teaches that cocoa butter is not used as a solidifying ingredient. Rather, the solidifying ingredients are eskar wax, microcrystalline wax, petrolatum and beeswax, for example (see column 6, lines 16-37). Thus the skilled addressee is given no motivation to increase the amount of cocoa butter in order to improve the solidification of the product and is even taught that it is not suitable for use as a solidification ingredient to form a stick product.

Importantly, as defined in the amended independent claims, cocoa butter is used as the principle solidifying ingredient. By contrast, Schlaeger is explicit that cocoa butter is not considered as a solidifying ingredient but rather as a liquid oil. Thus, Schlaeger requires the use of a number of emulsifying waxes as well as dimethicone copolyol in order to emulsify the liquid oils. Moreover, all these emulsifying waxes are used in a greater proportion than cocoa butter in all three examples at the bottom of column 18.

The use of cocoa butter as the principle solidifying ingredient in the present invention has the significant advantage that the end product melts at a lower temperature than the product of Schlaeger and is therefore suitable for use as a hair conditioner as discussed in the paragraph bridging pages 7 and 8 of the instant description. This is an important feature since it allows the user to apply the bar onto the hair or rub it between the hands and apply, as described. The formula melts easily in order to be applied throughout the head of hair and then be rinsed away

afterwards. If it does not melt easily it will not condition the hair as it will not apply evenly. Moreover, build up on the hair would be seen if it did not rinse away in water of a temperature normally used to rinse the hair. By contrast, Schlaeger discloses a hair stick that is intended for use as an antiseptic and for styling of the hair. It is not intended as a conditioner for use in the shower after shampooing or to be rinsed away easily.

The Examiner also objects that claim 24 is obvious from US 2001/0014315 (Harbeck). In particular, the Examiner states that the ranges given in claim 1 of this document overlap with the ranges of the present invention and that it would therefore be obvious for one of ordinary skill in the art to prepare a bar of soap comprising 10% cocoa butter. However, Applicant notes that Harbeck discloses a bar soap rather than a cosmetic hair conditioning product. Moreover, from the description it is quite apparent that the bar soap is intended for use on the skin and use with the hair is never contemplated. Soap is not compatible for use with the hair and does not clean it satisfactorily. Its alkalinity causes roughening of the cuticle on the hair follicle, leading to a dull, tangled appearance. A skilled person would not look in the direction of a soap bar when seeking to provide an improved hair conditioning product.

Moreover, it is quite apparent from the ranges given that one of ordinary skill in the art would never consider using as much as 10% cocoa butter in the bar. Thus, from the ranges in claim 1 a minimum of 100 grams of soap base and a minimum of 0.1 grams of cocoa butter are considered. In this case, cocoa butter makes up less than 0.1% of the total product. Similarly, the maximum amount of soap base is 5000 grams and the maximum amount of cocoa butter is 200 grams. In this case, cocoa butter forms less than 4% of the total.

This is borne out by the specific example in claim 2, in which cocoa butter forms just over 1% of the total. It is fanciful and mere conjecture to suggest that from this the skilled person would consider using as much as 10% cocoa butter.

The Examiner also objects that method claim 40 is obvious from Schlaeger. The Examiner specifically notes that the solid phase and liquid phases are mixed separately at different temperatures in Schlaeger and also accepts that a temperature range is not specified. Nonetheless, he considers mixing at any point during the heating or cooling process of forming a

solid to be an obvious preparation step to the skilled formulator.

The preparation of the product of the present invention is discussed at the second half of page 4 to the first half of page 6. Here, it is made clear that a temperature of up to only 60°C can be used as there is no need to soften the waxes of standard products and assist dispersion of the ingredients being mixed. Thus, there is no need to heat the mixture up to a temperature of about 75°C and the ingredients are not damaged. By contrast, Schlaeger explicitly uses a number of waxes in the product. Accordingly, the skilled person would not be able to use the low temperature range of claim 40 based on the teachings of Schlaeger.

The Examiner also objects that method claim 40 is obvious over Harbeck, although he again accepts that no specific temperature ranges are given. However, in paragraph [0080], Harbeck requires that the mixture is heated until the glycerine soap base melts. We understand that the melting point of a glycerine soap base is 63°C. Thus, the skilled person would recognize that Harbeck requires a temperature of at least 63°C and in practice would use a temperature several degrees above this. Consequently, the skilled person would not be able to achieve the low temperature range of method claim 40 in view of Harbeck.

In view of the above amendments and remarks, it is believed that the present application is in condition for allowance. Consideration and favorable action are respectfully requested.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment, including the Office Action's characterizations of the art, does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment or cancellation of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment or cancellation. Applicant reserves the right to prosecute the rejection claims in further prosecution of this or related applications.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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